

BADIAK & WILL, LLP  
Attorneys for Defendants  
EXPEDITORS INTERNATIONAL  
OF WASHINGTON, INC., and  
EXPEDITORS INTERNATIONAL  
106 Third Street  
Mineola, New York 11501-4404  
(516) 877-2225  
Our Ref.: 08-T-001-JK

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
INDEMNITY INSURANCE COMPANY OF NORTH  
AMERICA, a/s/o GE HEALTHCARE, GE MEDICAL  
SYSTEMS,

**ECF CASE**

Plaintiff,

**08 CV 0353 (RWS)**

-against-

**ANSWER**

EXPEDITORS INTERNATIONAL OF WASHINGTON,  
INC., EXPEDITORS INTERNATIONAL,  
Defendants.  
-----X

Defendant, EXPEDITORS INTERNATIONAL OF WASHINGTON, INC. (sued incorrectly herein as "EXPEDITORS INTERNATIONAL OF WASHINGTON, INC., EXPEDITORS INTERNATIONAL), ("hereinafter referred to as "Expeditors"), by their attorneys, BADIAK & WILL, LLP, answer plaintiff's Amended Complaint, upon information and belief, as follows:

1. Denies knowledge or information sufficient to form a belief to the allegation contained in paragraph "1" of plaintiff's Amended Complaint.
2. Admits that Expeditors is a corporation organized under the laws of one of the states of the United States with their principal place of business and corporate headquarters located at 1015 Third Ave, 12th Floor, Seattle WA 98104; except as so admitted, Defendant denies

the remainder of the allegations contained in paragraph "2." of plaintiff's Amended Complaint.

3. Admits Expeditors at all material times was engaged in business as an indirect air carrier for a shipment carried between Paris, France and Seoul, Korea. Except as so admitted, Defendant denies the remainder of the allegations contained in paragraph "3" of the plaintiff's Amended Complaint.

**AS TO THE FIRST CAUSE OF ACTION**

4. Repeats and re-alleges the allegations contained in paragraphs "1." through "3" herein with the same force and effect as if fully set forth at length herein as to the allegations contained in paragraph "4." of the plaintiff's Amended Complaint.

5. Denies the allegations contained in paragraph "5." of the plaintiff's Amended Complaint.

6. Denies the allegations contained in paragraph "6." of the plaintiff's Amended Complaint.

7. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "7." of the plaintiff's Amended Complaint.

8. Denies the allegations contained in paragraph "8." of the plaintiff's Amended Complaint.

9. Denies the allegations contained in paragraph "9." of the plaintiff's Amended Complaint.

10. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "10." of the plaintiff's Amended Complaint.

**AS TO THE SECOND CAUSE OF ACTION**

11. Repeats and re-alleges the allegations contained in paragraphs "1." through "10." herein with the same force and effect as if fully set forth at length herein as to the allegations contained in paragraph 14 of the plaintiff's complaint.

12. Denies the allegations contained in paragraph "12." of the plaintiff's Amended Complaint.

13. Denies the allegations contained in paragraph "13." of the plaintiff's Amended Complaint.

**FIRST AFFIRMATIVE DEFENSE**

14. In the event that the plaintiff had not or has not any title or interest in the shipment that is the subject matter of this action, then the plaintiff is not the real party in interest and is not entitled to maintain this suit.

**SECOND AFFIRMATIVE DEFENSE**

15. If the shipment referred to in the complaint suffered any damage, loss or delay, such loss or delay was caused by parties over which the answering defendant had no control.

**THIRD AFFIRMATIVE DEFENSE**

16. Defendant Expeditors was at all material times acting as an indirect air carrier and said actions were pursuant to an indirect carrier House Air Waybill issued by Defendant Expeditors issued for and covering the shipment described by plaintiff in the Amended Complaint, and Defendants Expeditors duly performed the terms and conditions on its part to be performed under the aforementioned House Air Waybill or other contracts, bills of

lading, tariffs and/or applicable regulations, statutes or treaties which bar recovery against the Defendant for the matters alleged in plaintiff's Amended Complaint.

**FOURTH AFFIRMATIVE DEFENSE**

17. Defendants Expeditors' liability, if any, is limited in accordance with the applicable House Air Waybill and/or other contracts, air waybills, tariffs and/or applicable regulations, statutes or treaties.

**FIFTH AFFIRMATIVE DEFENSE**

18. To the extent that plaintiff failed to meet the minimum filing requirement of filing a proper written claim within the times prescribed, this lawsuit is time barred.

**SIXTH AFFIRMATIVE DEFENSE**

19. To the extent that plaintiff failed to file suit within the time period prescribed, this lawsuit is time barred.

**SEVENTH AFFIRMATIVE DEFENSE**

20. The applicable House Air Waybill or other contracts, bills of lading, tariffs and/or applicable regulations, statutes and treaties do not contemplate responsibility for special or consequential damages. To the extent that plaintiff seeks recovery for special or consequential damages, the answering defendant is not responsible.

**EIGHTH AFFIRMATIVE DEFENSE**

21. Plaintiff failed to mitigate damages.

**NINTH AFFIRMATIVE DEFENSE**

22. The alleged damage did not occur while the shipment was in the custody or control of the Defendant.

**TENTH AFFIRMATIVE DEFENSE**

23. If the shipment was lost or damaged, the loss or damage was caused in whole or in part by the negligence of plaintiff, plaintiff's agents or other parties over which this Defendant had no control and for whose negligence the Defendant is not responsible.

**ELEVENTH AFFIRMATIVE DEFENSE**

24. The complaint fails to state a cause of action for which relief can be granted against this Defendant.

**TWELFTH AFFIRMATIVE DEFENSE**

25. The Amended Complaint alleges carriage of a shipment from Paris, France, to Seoul, Korea, and that this Court's jurisdiction is founded upon a treaty of the United States referred to commonly as the Warsaw Convention, Article Article 28(1) of which provides "an action for damage must be brought at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the court of the domicile of the carrier or of his principal place of business, or where he has a place of business through which the contract has been made, or before the court at the place of destination." The Amended Complaint does not allege the underlying contract was made or that the place of destination is within the Southern District of New York. Additionally, Defendant's principal place of business is not within the Southern District of New York. Accordingly, the venue chosen by plaintiff is improper and the action should be dismissed.

**WHEREFORE**, Defendant, EXPEDITORS INTERNATIONAL OF WASHINGTON, INC., demands judgment dismissing the Amended Complaint in its entirety or, alternatively, judgment limiting the liability of the Defendant pursuant to the

foregoing, together with costs and disbursements of defending the within action and all other relief which to this Court may seem just and proper in the circumstances.


DATED: Mineola, New York  
May 7, 2008

Yours, etc.,  
BADIAK & WILL, LLP

By:   
JAMES P. KRAUZLIS (JK-4972)

Attorneys for Defendant  
EXPEDITORS INTERNATIONAL OF  
WASHINGTON, INC.  
106 Third Street  
Mineola, New York 11501-4404  
(516) 877-2225  
Our Ref.: 08-T-001-JK

TO: LAW OFFICE OF DAVID L. MAZAROLI  
Attorneys for Plaintiff  
11 Park Place - Suite 1214  
New York, New York 10007

  
NOTARY PUBLIC  
JAMES P. KRAUZLIS  
Notary Public, State of New York  
No. 02KR5051531  
Qualified in Suffolk County  
Commission Expires Nov. 6, ~~2010~~  
1/11/2010